

### **REMARKS**

The Examiner is thanked for indicating the withdrawal of the objection to claim 9, and the withdrawal of the rejections under 35 U.S.C §102 of claims 1 - 3 and 9. Thus, the issues remaining in this application are the rejections under 35 U.S.C §§102 and 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

At the outset, it is noted that Applicant's traversal of the restriction requirement is maintained. Appropriate action will be taken at a later time. It is again stressed that Applicants are unaware of any prohibition in the M.P.E.P. on the subcombination/combination relationship being applied to articles and methods.

#### **Rejections Under 35 U.S.C §102**

Claims 1 and 9 remain rejected under 35 U.S.C §102. Reconsideration of this rejection is again respectfully requested. The focus of the argument in the Office Action appears to be that the disclosure that the "shrinkable polymer" of layer (9) of Strassel, disclosed as including "the polyamides", among 11 non-polyamide materials, anticipates the recitation of a *thermoplastic polymer* consisting of a polyamide or a blend of a polyamide or a polyolefin having a polyamide matrix. As discussed in Applicant's previous reply, the only further elucidation of such "polyamides" in the patent is that pertaining to elastomer layer (8), which, as explained previously, is not a thermoplastic. Thus, it is not seen that the patent suggests thermoplastic polymer (A) of the present claims, a thermoplastic polyamide or polyamide/polyolefin blend.

At page 5 of current Office Action, Applicants' prior arguments are mentioned, but the reference discussed is Flepp, and thus this discussion does not appear to be relevant. Moreover, to the extent that this discussion is intended, in fact, to apply to Strassel, the discussion in the Office Action does not support the conclusion advanced. The Office Action admits that it is the elastomeric polymers of layer (8) which are taught to be thermoplastic elastomeric polymers. To the extent that the Office Action now suggests that the shrinkable polymer layer (9) meets the previously claimed component (A), this is in error. "Polyamide" is mentioned as one of 11 possibilities for this layer, and the Office Action does not explain why this would anticipate (much less suggest) a thermoplastic polyamide. Applicant's prior argument therefore stands.

In addition - and most importantly - it is submitted that the Office Action misinterprets the teachings of the references with respect to the position of the shrinkable polymer, alleged to teach the "inner layer" of the present claims. As is evident in Strassel, patentees teach an "intermediate elastomer layer (8)", positioned *between* the shrinkable polymer layer (9), and a flexible metal pipe. See, for example, Figures 1 - 3. Thus, to the extent that this patent it is argued to teach a flexible pipe, and, "in succession", an inner layer and a polyolefin layer, the inner layer would have to be patentee's elastomer layer (8), and the polyolefin layer would be the shrinkable polymer (9). Thus, Applicant's previous discussion comparing the elastomer layer (8) with the presently claimed inner layer of a thermoplastic polymer is apropos. While it may be argued in the Office Action that the shrinkable polymer in the patent is taught to be a polyamide, this is relevant only to a layer which is *not* next to the flexible pipe in the patent. As such, it can be seen that the Office Action misunderstands the relevance of the shrinkable polymer teaching, and it is evident that of patentees fail to teach that the elastomer (8) is a thermoplastic polymer consisting of a polyamide or a blend of a polyamide and a polyolefin. As a result, in the rejection fails.

#### Rejections Under 35 U.S.C §103

Claims 2 - 5 have been rejected under 35 U.S.C §103 over Strassel taken with Fisher; claim 6 has been rejected over Strassel taken with Rober; and claim 7 has been rejected under 35 U.S.C §103 over Strassel taken with Hill. These rejections were made in the prior Office Action, as detailed at page 3 of the present rejection. Inasmuch as Strassel fails to disclose layers of the composition and order of the present claims, it is seen that, as Strassel is the primary reference in these rejections, the rejections also fail.

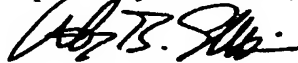
Claim 10 has been newly rejected under 35 U.S.C §103 over Strassel taken with Flepp. Reconsideration of this rejection is also respectfully requested. The deficiencies of Strassel, in failing to disclose an inner layer, adjacent to the flexible pipe, of a thermoplastic polymer consisting of a polyamide or blend of polyamide and polyolefin is discussed above. Flepp is cited in order to suggest a layer comprising a blend of a polyamide and polyolefin having a polyamide matrix, as recited in claim 10. However, even if one of ordinary

skill in the art would have used a blend of polyamide and polyolefin to replace the *polyamide* shrinkable polymer of Strassel, such would not result in the presently claimed structure, inasmuch as the shrinkable polymer is not the inner layer in Strassel. Moreover, it is not seen - nor does the Office Action attempt to suggest - why it would be obvious to substitute the thermoplastic of polyolefin elastomer of the elastomer layer (8) in Strassel, with the adhesion-promoting layer of Flepp. Indeed, it is submitted that such a substitution would *not* be obvious, inasmuch as the teachings of Flepp are directed to providing "good steady enduring adhesion" between EVOH and polyamides. See, for example, the required EVOH intermediate layer of Flepp noted at column 5, lines 7 - 58. Since an EVOH layer is not employed or disclosed in Strassel, there is simply no motivation to combine these references, and this rejection also fails.

Accordingly, it is submitted that the claims of the application are in condition for allowance and prompt passage to issue is respectfully requested. However, if the Examiner has any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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